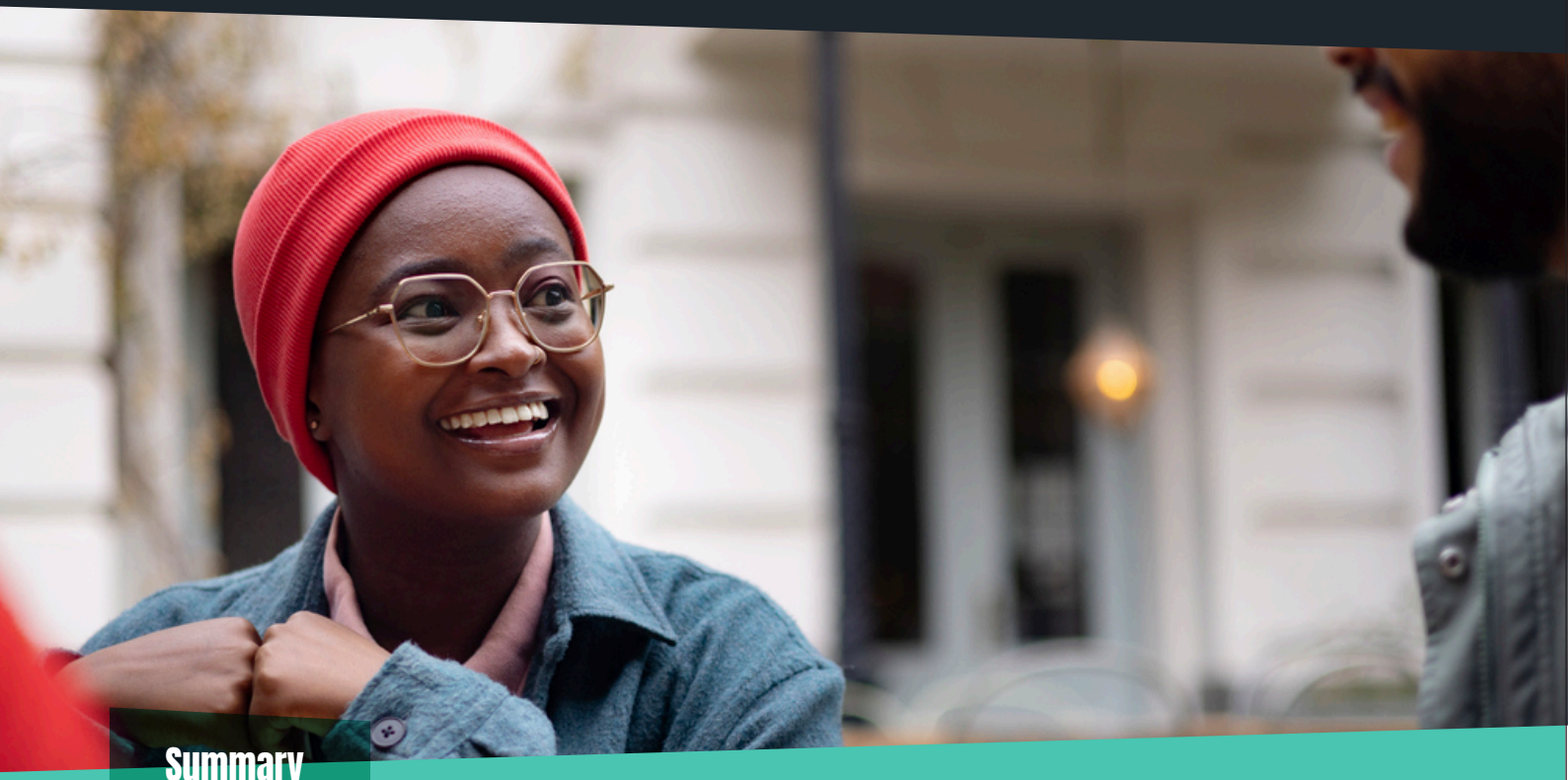
CENTRE FOR MENTAL HEALTH

A MENTAL HEALTH COMMISSIONER FOR ENGLAND



Summary

This policy note explores the opportunity for the creation of a new statutory Mental Health Commissioner for England. Drawing on international evidence, it finds that this role exists in many countries, with a wide range of different functions and constitutions.

Given the context of the English health and care system, we conclude that a Mental Health Commission here would need to be:

- Enshrined in statute, to give it sufficient powers and independence, including access to data and information, and flexibility to explore a wide range of topics
- Set up with a clear purpose, working strategically across government to promote mental health and advocate for people with mental health needs
- Complementary to existing bodies, such as the Care Quality Commission, with clear distinctions in function and effective working relationships

A Mental Health Commissioner would benefit the public by providing a constant presence for mental health within government and in the public sphere more generally.

INTRODUCTION

In its report on the Government's draft Mental Health Bill, a Committee of MPs and Peers made a new recommendation for the establishment of a Mental Health Commissioner for England.

As the Committee envisaged the new role: "*They would oversee the direction of travel for the key reforms arising from the [Mental Health] Bill and their implementation, monitoring outcomes and supporting cultural change. They should be an advocate for patients, their families and carers and speak up about the stigma still attached to severe mental illness. They should bring forward proposals to tackle inequalities in service provision and the operation of the MHA, advise patients and providers on complaints procedures and make recommendations on further reform.*"

Mental Health Commissioners already exist in a number of international jurisdictions, including Scotland, Ireland, Canada, Aotearoa New Zealand and Australia. In the last of these, there is both a federal Commission and equivalent bodies in most of the six states.

We have explored how these bodies work and what we could learn from experience elsewhere about how something like it could add value in England.

Note: while the Mental Health Act covers both England and Wales, this paper focuses solely on England. The health and care system in Wales is distinctive and we would suggest that it would require a separate arrangement.

INTERNATIONAL MODELS AND EXPERIENCE

While there is little formal evaluation or research evidence about the impact of Mental Health Commissions or Commissioners, it is clear that the models used in different countries have varied widely, and the Commissioner role looks very different in different places. There is not a single model, or even typology, to draw on, so the role would need to be suitable to the purpose and ambition of its context.

PURPOSE

In some jurisdictions, including Scotland and Victoria, the Commission's role is predominantly to monitor mental health services and safeguard individual rights and safety: the function of an inspectorate or ombudsman. In others, such as New South Wales and Aotearoa New Zealand, it has a more strategic role, either creating or critiquing government plans to boost public mental health and wellbeing, working across the whole of government to secure better mental health policies and practices. More rarely, for example in Western Australia, the Commission plans and purchases mental health services on behalf of the state: similar to the role of NHS commissioning bodies in England.

LOCATION

In most, but not all, countries and states, the Commission is an offshoot of its government's health department. It may be constituted as an 'office' within the department or as an independent or quasi-independent public body. This creates a natural connection with the government's minister for mental health.

STATUTORY ROLE

In some jurisdictions, the Commission is enshrined in statute, either in perpetuity or for a fixed period. In others, it is set up by government, but lacks the security of a statutory basis. Where a Commission is enshrined in statute, it is helpful for its scope to be flexible, to enable the Commissioner to investigate a wide range of issues, and not limited to specific government departments or topics of interest: they may for example wish to explore matters such as climate change, education, or justice, just as much as health and social care.

INDEPENDENCE

Some Commissions are also more independent of their governments than others. With independence comes the benefit of being able to speak out and call out poor practice, but at the risk of lacking 'teeth': the Commissioner can inform and influence policy but not 'make' it unilaterally. Their relationship with the minister for mental health is therefore critical – with clarity about their complementary roles, and understanding about how the Commissioner reports to the minister and, where necessary, offers critical advice and counsel. Overall, being located within government but with a degree of independence and the ability to speak out publicly seems to strike the right balance.

APPOINTMENT PROCESS

As with equivalent roles within government, it would be important for the Mental Health Commissioner's appointment to be politically neutral. Appointing the Commissioner through the 'Paris principles' (a set of standards agreed by the United Nations, which require national human rights institutions to be fully independent of their governments, with sufficient resources to fulfil their responsibilities freely and adequately) would ensure they are independent of the government of the day.

ACCESS TO DATA

Access to data and information is another critical foundation for a Commission. A statutory footing can build-in the power to request data from government departments and other public bodies. This is vital to enable the Commissioner to scrutinise systems and services, and to raise matters of concern. In New South Wales, this is written into the legislation for the Commissioner, enabling them to monitor progress and hold the system to account.

RELATIONSHIPS WITH OTHER PUBLIC BODIES

The role of Mental Health Commissioner cannot, of course, exist in isolation. They have to fit within the wider ecosystem of government, public services and arm's length bodies. This means they need clarity of role – to avoid creating confusion or duplication – and well-understood relationships with other bodies. In England, that would mean working alongside the Care Quality Commission and other inspectorates (for schools, prisons, and police, for example) without straying into their roles.

In England, the Care Quality Commission has a statutory role to inspect all health and care services, with a specific function (inherited from the Mental Health Act Commission) to safeguard the rights and dignity of people subject to the Mental Health Act. A Commissioner would need either to assume some of those responsibilities, or more likely take on a complementary role with a more strategic function. While the CQC performs essential functions in holding services and systems to account for the care they provide, it does not exist to hold government itself to account or to comment publicly on policies and strategies.

It can work with the system as it is, but not change the system.

The distinction between Ofsted and the Children's Commissioner for England might provide a precedent for such an arrangement here. The functions of the two are clearly different, with distinctive powers and responsibilities, that between them provide extra benefit to the public that would not be achieved by one of them alone. Both have powers of entry to inspect services that work with children, but their roles and the outcomes they seek to provide are very different. And the Children's Commissioner has a wider advocacy role across the whole of government as well as civil society more broadly.

A further consideration would be the relationship between this role and other Commissioners. The nature of mental health is that it is also the business of other Commissioners – for example those for children and for victims of crime. So a strong working relationship across the Commissions would enable them to achieve more together than by working in separate silos.

IMPLICATIONS AND NEXT STEPS

A Mental Health Commissioner for England would add a new dimension to government that would benefit all of us. They would offer sustained leadership for mental health – complementary to existing roles and structures in government.

They would operate both within the machinery of state and in the media and wider public sphere. They would have influence within government and the NHS, but with the freedom to speak out when necessary: to lead public debate, challenge stigma, and break boundaries and taboos.

They could help to galvanise action across departments and systems to improve population mental health and ensure people living with mental illness are treated fairly and equitably in every sphere of life.

By helping to put mental health at the heart of government, the Commissioner could change the ways decisions get made – supported by a 'mental health policy test' that could be used by all departments to improve their impact on the nation's wellbeing. And by establishing the role in perpetuity, mental health would no longer be a topic that waxed and waned in its profile and importance within government, reliant on short-term interest or hard-won attention.

Creating a Mental Health Commissioner for England would require legislation to secure sufficient powers, and independence to fulfil its evident potential, while keeping it distinct from the CQC and other existing bodies. A new Mental Health Act would enable this – but it could equally be legislated for on its own. This may be an idea whose time has come.

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